

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

THE SANITARY BOARD OF THE CITY
OF CHARLESTON, WEST VIRGINIA, a
municipal utility,

Plaintiff,

v.

Civil Action No. 2:18-cv-01100

COLONIAL SURETY COMPANY, a
Pennsylvania corporation, and
PARTNERRE INSURANCE COMPANY OF
NEW YORK, a New York corporation,

Defendants;

and

COLONIAL INSURANCE COMPANY, a
Pennsylvania corporation,

Third-Party Plaintiff,

v.

TRI-STATE PIPELINE, INC., and Ohio
corporation, and ERIC D. TAYLOR,

Third-Party Defendants and
Fourth-Party Plaintiffs,

v.

BURGESS & NIPLE, INC., an Ohio
corporation,

Fourth-Party Defendant.

ORDER

Pending is Fourth-Party Defendant, Burgess & Niple, Inc.'s Motion for Leave to File a Supplemental Motion for Summary Judgment on the Claims of Tri-State Pipeline, Inc. (ECF No. 502), filed April 29, 2022. No response has been filed.

On March 15, 2021, Burgess & Niple filed its motion for summary judgment against fourth-party plaintiff Tri-State Pipeline, Inc. ("Tri-State"). On August 27, 2021, this court entered a 66-page memorandum opinion and order which granted Burgess & Niple's motion for summary judgment in part and dismissed the majority of Tri-State's 57 stated claims against Burgess & Niple. ECF No. 468.

Burgess & Niple now seeks to file a supplemental motion for summary judgment pertaining to the claims that survived its previous motion. ECF No. 502. It appears that the basis of the supplemental motion is that Burgess & Niple believes Tri-State's expert cannot "provide proper expert testimony" on Tri-State's remaining claims.

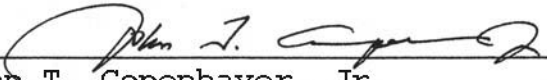
District courts have discretion to consider second or successive motions for summary judgment. Hoffman v. Tonnemacher, 593 F.3d 908, 910-11 (9th Cir. 2010) (collecting cases).

Here, the court declines to exercise that discretion inasmuch as the court has already fully considered a comprehensive motion for summary judgment by Burgess & Niple. Burgess & Niple is free to contest the sufficiency of Tri-States' evidence on the remaining claims at trial.

Accordingly, the court ORDERS that Burgess & Niple's motion (ECF No. 502) be, and hereby it is, denied.

The Clerk is requested to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: May 23, 2022



John T. Copenhaver, Jr.
Senior United States District Judge